Supreme Court, U.S.
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No. 02-682

IN THE

Supreme Court of the United States

VERIZON COMMUNICATIONS INC.,
Petitioner,

v.

LAW OFFICES OF CURTIS V. TRINKO, LLP,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

JOINT APPENDIX

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TABLE OF CONTENTS

	Page
Relevant Docket Entries in the United States District Court for the Southern District of New York, No. 00 Civ. 1910	1
Relevant Docket Entries in the United States Court of Appeals for the Second Circuit, No. 01-7746	8
Complaint, *Law Offices of Curtis V. Trinko, L.L.P. v. Bell Atlantic Corp.*, No. 00 Civ. 1910 (S.D.N.Y. filed Mar. 10, 2000)	12
Amended Complaint, *Law Offices of Curtis V. Trinko, L.L.P. v. Bell Atlantic Corp.*, No. 00 Civ. 1910 (S.D.N.Y. filed Jan. 19, 2001)	34

The following orders, opinions, and statutes have been omitted in printing this Joint Appendix because they appear on the following pages of the Appendix to the printed Petition for a Writ of Certiorari:

Law Offices of Curtis V. Trinko, L.L.P. v. Bell Atlantic Corp., 305 F.3d 89 (2d Cir. June 20, 2002)	1a
Law Offices of Curtis V. Trinko, L.L.P. v. Bell Atlantic Corp., 123 F. Supp. 2d 738 (S.D.N.Y. Dec. 6, 2000)	49a
Order, Law Offices of Curtis V. Trinko, L.L.P. v. Bell Atlantic Corp., No. 00 Civ. 1910 (S.D.N.Y. Apr. 26, 2001)	62a
Order, Law Offices of Curtis V. Trinko, L.L.P. v. Bell Atlantic Corp., No. 01-7746 (2d Cir. Oct. 1, 2002)	69a
Section 2 of the Sherman Act, 15 U.S.C. § 2	70a
Section 4 of the Clayton Act, 15 U.S.C. § 15(a)	70a
47 U.S.C. § 202(a)	70a
47 U.S.C. § 206	71a

TABLE OF CONTENTS—Continued

	Page
47 U.S.C. § 207	71a
47 U.S.C. § 251	71a
47 U.S.C. § 252	81a
47 U.S.C. § 253	90a
47 U.S.C. § 271	91a
Section 601(b) of the Telecommunications Act of 1996, codified in 47 U.S.C. § 152 note	103a

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

No. 1:00CV1910

BELL ATLANTIC, *et al.*,
Petitioner,
v.
LAW OFFICES OF CURTIS V. TRINKO, LLP,
Respondent.

RELEVANT DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
3/10/2000	1	COMPLAINT filed; Summons issued and Notice pursuant to 28 U.S.C. 636 (c); FILING FEE $150.00 RECEIPT # 369125. (em) [Entry date 03/13/00]
5/8/2000	6	ORDER, Amended Complaint due on or before 5/19/00; Deadline for filing of motion to dismiss by 6/19/00; Response to motion deadline 7/21/00; Reply to response to motion deadline 8/4/00; staying discovery until determination of the motion to dismiss and no further adjournments (signed by Judge Sidney H. Stein); Copies mailed. (cd) [Entry date 05/09/00]
5/24/2000	8	STIPULATION and ORDER; Plaintiff shall advise Defendant on or before May 19, 2000 whether it intends to amend the complaint, including by adding additional parties plaintiff, and shall serve any such amended complaint on or before May 26,

DATE	NO.	PROCEEDINGS
		2000; If Plaintiff does not amend the complaint: (a) Defendant shall serve a motion to dismiss the Complaint on or before June 19, 2000; (b) Plaintiff shall serve its answering papers on the motion to dismiss on Defendant on or before July 21, 2000; Defendant shall serve its reply papers on the motion to dismiss on Plaintiff on or before August 4, 2000; There shall be no adjournment of the aforementioned dates; All discovery of the parties is stayed pending resolution of the motion to dismiss; If Plaintiff amends the complaint as provided in paragraph 1 hereof, the parties shall promptly submit to the Court a proposed alternate schedule for Defendant's answering or moving with respect to such amended complaint; The foregoing shall be without prejudice to Plaintiff's amending the Complaint as of right as otherwise permitted by the Federal Rules of Civil Procedure. Plaintiff shall not make a class certification motion until after the resolution of the motion to dismiss; (signed by Judge Sidney H. Stein) (djc) [Entry date 05/26/00] [Edit date 05/31/00]
6/19/2000	9	NOTICE OF MOTION (Fld on Service Date) by Bell Atlantic Corp. to dismiss plntf's complaint in its entirety; Return date not indicated (cd) [Entry date 08/07/00]

DATE	NO.	PROCEEDINGS
8/4/2000	10	MEMORANDUM OF LAW by Bell Atlantic Corp. in support of [9-1] motion to dismiss plntf's complaint in its entirety . (cd) [Entry date 08/07/00]
8/4/2000	11	REPLY MEMORANDUM by Bell Atlantic Corp. re: [9-1] motion to dismiss plntf's complaint in its entirety (cd) [Entry date 08/07/00]
8/8/2000	12	MEMORANDUM OF LAW by Law Offices of in opposition to [9-1] motion to dismiss plntf's complaint in its entirety (cd) [Entry date 08/09/00]
12/6/2000	13	OPINION and ORDER #84888; that for the reasons set forth on this Opinion and Order, the [9-1] motion to dismiss plntf's complaint in its entirety is granted; pltff may replead its Communications Act claim based on the defts alleged violation of 47 U.S.C. 202(a) as well as its supplemental claim for tortuous interference with contract within 20 days of this Opinion and Order. (signed by Judge Sidney H. Stein); Copies mailed. Original document sent to Judgment Clerk. (jp) [Entry date 12/07/00]
12/20/2000	15	NOTICE OF MOTION by Law Offices of for reconsideration of [13-1] order pltff may replead its Communications Act claim based on the defts alleged violation of 47 U.S.C. 202(a) as well as its supplemental claim for tortious interference with contract within 20 days of this Opinion and Order, [13-2] order, for leave to amend complaint,

DATE	NO.	PROCEEDINGS
		granting further and other relief as the Court deems just and proper (Filed on service date). (sl) [Entry date 12/27/00]
12/20/2000	16	MEMORANDUM OF LAW Offices of in support of [15-1] motion for reconsideration of [13-1] order pltff may replead its Communications Act claim based on the defts alleged violation of 47 U.S.C. 202(a) as well as its supplemental claim for tortious interference with contract within 20 days of this Opinion and Order, [13-2] order, [15-2] motion for leave to amend complaint, [15-3] motion granting further and other relief as the Court deems just and proper. (sl) [Entry date 12/27/00]
12/20/2000	17	NOTICE of substitution of attorney for Law Offices of Joseph P. Garland (sl) [Entry date 12/27/00]
12/28/2000	18	JUDGMENT that for the reasons stated in the Court's Opinion (84888) and Order dated 12/6/00, deft's motion to dismiss the complaint is granted with leave to replead within 20 days of the opinion (84888) and Order dated 12/6/00 (Signed by James M. Parkison, Clerk of Court); Mailed copies and notice of right to appeal. Entered on Docket: 12/29/00. (lam) [Entry date 12/29/00]
1/3/2001	19	STIPULATION and ORDER, that the time within which deft may respond to the pltff's motion for reconsideration is extended to 1/19/01, and that the time within which pltff

DATE	NO.	PROCEEDINGS
		may reply to deft's response is extended to 2/5/01; pltff's time within which to replead certain claims under the Court's Opinion and Order dated 12/6/00 is extended to 10 days following the Court's ruling on pltff's motion for reconsideration (or such time and on such terms as the Court may determine in its ruling) (signed by Judge Sidney H. Stein) (lam) [Entry date 01/04/01] [Edit date 01/08/01]
1/9/2001	20	ORDER; that plaintiff's motion for reconsideration is denied, except that plaintiff is granted leave to replead the Sherman Act claim in addition to the claims for violation of Sec. 202 of the Communication Act on or before 1/19/01. (signed by Judge Sidney H. Stein); Copies mailed. (pl) [Edit date 01/10/01]
1/19/2001	21	AMENDED COMPLAINT by Law Offices of (Answer due 2/1/01 for Bell Atlantic Corp.) amending [1-1] complaint ; Summons issued. Jury Trial Demand; (docmt received in night dep. On 01/19/01 at 8:36 p.m.) (djc) [Entry date 01/22/01]
2/5/2001	22	NOTICE OF MOTION (FILED ON SERVICE DATE) by Bell Atlantic Corp. for an order purs. to Rule 12(b)(6) of the F.R.C.P., for an order granting Bell Atlantic's motion to dismiss pltff's amended complaint in its entirety. No return date indicated. (sn) [Entry date 03/06/01]

DATE	NO.	PROCEEDINGS
3/2/3001	23	MEMORANDUM OF LAW BY Bell Atlantic Corp. in support of [22-1] motion for an order purs. to Rule 12(b)(6) of the F.R.C.P., for an order granting Bell Atlantic's motion to dismiss pltff's amended complaint in its entirety. (sn) [Entry date 03/06/01]
3/2/2001	24	MEMORANDUM OF LAW by Law Offices of in opposition to [22-1] motion for an order purs. to Rule 12(b)(6) of the F.R.C.P., for an order granting Bell Atlantic's motion to dismiss pltff's amended complaint in its entirety. (sn) [Entry date 03/06/01]
3/2/2001	25	REPLY MEMORANDUM by Bell Atlantic Corp. in further support of [22-1] motion for an order purs. to Rule 12(b)(6) of the F.R.C.P., for an order granting Bell Atlantic's motion to dismiss pltff's amended complaint in its entirety. (sn) [Entry date 03/06/01]
4/26/2001	26	ORDER granting [22-1] motion for an order purs. to Rule 12(b)(6) of the F.R.C.P., for an order granting Bell Atlantic's motion to dismiss pltff's amended complaint in its entirety. (signed by Judge Sidney H. Stein); Copies mailed. (sn) [Entry date 05/01/01]

DATE	NO.	PROCEEDINGS
5/25/2001	27	CIVIL JUDGMENT; that for the reasons stated in the Court's Order dated 4/26/01, defendant's motion to dismiss the amended complaint is granted. (signed by James M. Parkison, Clerk of Court); Mailed copies and notice of right to appeal. Entered on Docket: 05/30/01. (pl) [Entry date 05/30/01]
6/25/2001	28	NOTICE OF APPEAL by Law Offices of ; from [27-1] judgment order, [26-1] order . Copies of notice of appeal mailed to Attorney(s) of Record: Henry B. Gutman, Dan K. Webb, Richard G. Taranto, Mark C. Hansen and John Thorne. $105.00 Appeal filing fee paid 6/25/01 on receipt # E 409996. (dt) [Entry date 06/26/01]
2/7/2003	31	True Copy of Order from the USCA RE: Pursuant to Rule 12.7 of the rules of the Supreme Court of the United States, you are requested to certify and transmit immediately, the entire record in the above case to this office. CERTIFIED 1/31/03, 02-682, 01-7746, 00CV-1910. ROSEANN B. MACKECHNIE, CLERK, USCA.. (pr) [Entry date 02-20-03]
2/20/2003	—	Indexed record on appeal file sent to the Supreme Court of the United States. Docket # USSC 02-682, USCA 01-7746, USDC 00CV-1910. (pr) [Edit date 02/21/03]
2/20/2003	32	Notice that the record on appeal has been certified and transmitted to the U.S. SUPREME COURT. Docket # USSC 02-682, USCA 01-7746, USDC 00CV-1910. (pr) [Entry date 02/21/03]

UNITED STATES CIRCUIT COURT OF APPEALS
2nd CIRCUIT

Docket No. 01-7746

BELL ATLANTIC,

Petitioner,

v.

LAW OFFICES OF CURTIS V. TRINKO, LLP,

Respondent.

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
10/5/01	Appellant Law Offices of Curti brief FILED with proof of service. (cv74)
10/5/01	Appellant Law Offices of Curti joint appendix filed w/pfs. Number of volumes: 1. (cv74)
11/5/01	Appellee Bell Atlantic Corp. brief filed with proof of service. (cv74)
11/16/01	Unpublished orders from Appellee Bell Atlantic Corp. received. (Attached to briefs) (cv74)
11/26/01	Appellant Law Offices of Curti reply brief filed with proof of service. (cv74)
11/28/01	Letter dated 11/28/01 from Joseph P. Garland, Esq., enclosing a clean copy of an opinion that was referenced in appellant's reply brief, received. (cv74)
1/10/02	Case heard before SACK, KATZMANN, FLETCHER, C.JJ. (TAPE: 20 & 21) (ca96)

DATE	PROCEEDINGS
5/6/02	Appellee Bell Atlantic Corp. 28(J) letter received. (cv74)
5/23/02	Appellant Law Offices of Curti 28(J) letter received. (cv70)
6/20/02	Judgment of the district court is Affirmed in part, Vacated in part, and Remanded by published signed opinion filed. (RAK) [01-7746] (cv74)
6/20/02	Judge RDS concurring in part and dissenting in part in a separate opinion filed. (cv74)
6/25/02	Errata sheet re: filed. (RDS) (cv74)
7/8/02	Appellee Bell Atlantic Corp. Petition for rehearing, petition for rehearing en banc [2117807-2] with proof of service filed. (cv74)
7/9/02	Movant United States Assoc., Movant BellSouth Corp., Movant SBC Communication motion to file brief as amicus curiae FILED (w/pfs). [2118068-1] (cv74)
7/15/02	Errata sheet re: filed. (RDS) (cv74)
7/15/02	Appellant Law Offices of Curti affidavit in opposition to motion to file brief as amicus curiae [2118068-1] filed (w/pfs.). (cv70)
7/15/02	Appellant Law Offices of Curti memorandum of law in opposition to motion to file brief as amicus curiae [2118068-1] filed (w/pfs). (cv70)
7/18/02	Movant United States Assoc., Movant BellSouth Corp., Movant SBC Communication papers supporting motion #[2118068-1] by Movant United States Assoc., BellSouth Corp., SBC Communication filed. (cv74)

DATE	PROCEEDINGS
8/6/02	Appellant Law Offices of Curti 28(J) letter received. (cv74)
8/14/02	Amended published signed opinion filed. (RAK). (cv74)
8/14/02	Judge RDS Amended concurring in part and dissenting in part in a separate opinion filed. (cv74)
8/30/02	Errata sheet re: filed. (RAK) (cv74)
9/16/02	Order FILED GRANTING motion to file brief as amicus curiae [2118068-1] by Movant United States Assoc., BellSouth Corp., SBC Communication, endorsed on motion form dated 7/9/02. Before: RDS, RAK, C.JJ., BBF, 9th Cir. (AH) (cv74)
9/16/02	Amicus Curiae United States Assoc., Amicus Curiae BellSouth Corp., Amicus Curiae SBC Communication brief filed with proof of service. (cv74)
10/1/02	Order FILED DENYING petition for REHEARING [2117807-1] by Appellee Bell Atlantic Corp., endorsed on motion dated 7/8/02., DENYING petition petition for rehearing in banc [2117807-2] by Appellee Bell Atlantic Corp., endorsed on motion dated 7/8/02. (AH) (cv74)
10/8/02	Judgment MANDATE ISSUED. (cv74)
11/12/02	Notice of filing petition for writ of certiorari for Appellee Bell Atlantic Corp. dated 11/6/02 filed. Supreme Ct#: 02-682. (cv74)

DATE	PROCEEDINGS
1/22/03	Letter dated 1/16/03 from the Supreme Court of the United States, requesting a certified copy of the record, and all briefs and exhibits. (Supreme Court # 02-682) (cv74)
1/31/03	Acco, briefs, and appendices transmitted to the Supreme Court of the United States. (cv74)
2/14/03	Certified copy of the U.S.S.C. request to trasnmit the filings in this Court receipt returned from the district court. (cv74)
2/26/03	Certified copy of receipt returned from the district court.(ret)
3/17/03	Certified copy of Supreme Court order GRANTING petition for writ of certiorari [2201822-1] by Appellee Bell Atlantic Corp., endorsed on motion form dated 11/12/02. dated 3/10/03. The petition for writ of certiorari is granted. Limited to the following Question: "Did the Court of Appeals err in reversing the District Court's dismissal of respondent's antitrust claims?" (cv74)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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00 CIV. 1910

LAW OFFICES OF CURTIS V. TRINKO, LLP, individually and on behalf of all others similarly situated,
Plaintiff,

against

BELL ATLANTIC CORPORATION,
Defendant.

COMPLAINT
JURY TRIAL DEMANDED

Plaintiff, for its Class Action Complaint, alleges on information and belief as follows:

I.

OVERVIEW OF THE ACTION

1. This is a class action that arises from a policy by Defendant, Bell Atlantic, to use its control over the physical wires over which phone services are delivered to business and homes in the geographic market in which has historically provided local, non-wireless telephone service—i.e. New England and the Mid-Atlantic States—to impair its competitors' customers' ability to obtain local telephone service and to hinder efforts by AT&T and others to enter into the business of providing local telephone service, while providing adequate services to customers using Bell Atlantic for their local phone service. The Class consists of customers who were damaged by Bell Atlantic as a result of such conduct.

2. Access to Bell Atlantic's wires is essential for the provision of local telephone service. By making it difficult for AT&T and others, and ultimately their local telephone service customers, to obtain full use of those local lines on a non-discriminatory basis, Bell Atlantic has deterred and will continue to deter potential customers from switching to another company for local telephone service or cause customers that had switched to switch back to Bell Atlantic in frustration for the poor services rendered by their new local phone service provider, ironically as a direct result of Bell Atlantic's own conduct.

3. This action asserts claims against Bell Atlantic for violations of section 202 of the Federal Communications Act of 1934 (the "FCA"), 47 U.S.C. § 202; section 251 of the Telecommunications Act of 1996 (the "1996 Act"), 47 U.S.C. § 251; section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2; and for interference with the contractual relationships established by Class members with providers of local telephone service by a company other than Bell Atlantic.

The 1996 Telecommunications Act.

4. This action largely derives from the sea change contemplated by the Telecommunications Act of 1996.

5. Until 1982, American Telephone & Telegraph Co. ("AT&T") dominated the national telecommunications industry, controlling virtually all long-distance telephone service, most local telephone service, and a substantial amount of telephone equipment manufacturing. In 1982, however, AT&T entered into an antitrust consent decree in an action brought against it by the United States Justice Department, which ended its industry dominance.

6. The decree split AT&T from its local telephone service subsidiaries, known as "Baby Bells." By doing so, the decree sought to encourage new competition in long-distance service by firms such as MCI and Sprint. It also encouraged new competition in telephone equipment markets.

7. The decree, however, did not introduce new competition into the local telephone service markets. Rather, it left each local market in the hands of a single state-regulated local service supplier, such as (at the time) New York Telephone or NYNEX in New York and Bell Atlantic in Washington, D.C. At the same time, the decree forbade most such local service suppliers from entering long-distance markets. That prohibition, by preventing entry by local firms willing and able to supply long-distance service, risked less long-distance competition. But the decree reflected a countervailing concern that local firms might enjoy special long-distance advantages not available to purely long-distance companies.

8. There ensued competition in the United States for the provision of interstate long-distance telephone service.

9. In 1996, Congress enacted the 1996 Act. It altered the postdecree status quo in two important ways. First, it created a legal method through which local telephone service companies may enter long-distance markets, thereby providing additional long-distance competition. *See* 47 U.S.C. § 271(c)(2)(B) (listing 14 conditions that, if met, permit incumbent local firms to enter long-distance market). Second, it conditioned that long-distance entry upon either (1) the introduction of competition into local markets or (2) the failure of a competing carrier to request access to or interconnection with the local service supplier (or the competing carrier's failure to engage in "good faith" negotiations). 47 U.S.C. §§ 271(c)(1)(A), (B).

10. Among other things, the 1996 Act was meant to promote new local entry by requiring incumbents (*i.e.*, Bell Atlantic in the geographic market at issue in this case) (1) to "interconnect" with new entrants (thereby allowing even a partial new entrant's small set of subscribers to call others within an entire local area), 47 U.S.C. § 251(c)(2); (2) to sell retail services to new entrants at wholesale rates (thereby allowing newly entering firms to become "resellers,"

competing in retailing), 47 U.S.C. § 251(c)(4); and (3) to provide new entrants "access to network elements," say, house-to-street telephone lines, "on an unbundled basis" (thereby allowing new entry in respect to some aspects of the local service business without requiring wasteful duplication of the entire business), 47 U.S.C. § 251(c)(3). In August 1997, NYNEX and Bell Atlantic merged to form Bell Atlantic. Upon such merger, Bell Atlantic provided local telephone service in New England and the Middle Atlantic States, from New York south to Virginia and West Virginia.

11. Bell Atlantic has applied for and received necessary regulatory permission in certain parts of the Geographic Market (defined below) to offer long-distance telephone service, including in New York, although AT&T has said that it intends to ask the Federal Communications Commission to suspend that authority because of Bell Atlantic's failure to provide adequate, but necessary, support for other companies (including AT&T) seeking to offer customers Local Phone Service (defined below) in New York.

12. In fact, since the entry of competitors in the Local Phone Service market in the Geographic Market, with respect to the support from Bell Atlantic that is necessary for such competitors to provide adequate support for their customers, Bell Atlantic has provided a level of service that is materially below the level that is accorded customers of Bell Atlantic's Local Phone Service in functionally identical circumstances. As a result of this practice, the customers of Bell Atlantic's competitors in this market have been damaged.

II.

JURISDICTION AND VENUE

13. This Complaint alleges violations of section 202(a) of the FCA, as amended, 47 U.S.C. § 202(a), section 251 of the Telecommunications Act of 1996, 47 U.S.C. § 251, and

section 2 of the Sherman Antitrust Act of 1890, 15 U.S.C. § 2. It also invokes the Court's supplemental jurisdiction with respect to the Class's claim that arises under state common law.

14. The jurisdiction of this Court exists pursuant to sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26; section 207 of the FCA, as amended, 47 U.S.C. § 207; and sections 1331 and 1337 of the United States Judicial Code, 28 U.S.C. §§ 1331 and 1337.

15. Bell Atlantic is found or transacts business in the Southern District of New York, and venue in this Court therefore exists pursuant to section 12 of the Clayton Act, 15 U.S.C. § 22 and 28 U.S.C. § 1391(b). In addition, Bell Atlantic has sufficient contacts with the Southern District of New York so as to make it subject to personal jurisdiction in this District were the Southern District of New York a separate state, and venue in this Court therefore exists pursuant to section 1391 of the Judicial Code, 28 U.S.C. § 1391(c).

III.

PARTIES

16. Plaintiff is a limited liability partnership organized under New York Law.

17. Defendant Bell Atlantic Corporation ("Bell Atlantic"), is a Delaware corporation with its principal offices at 1095 Avenue of the Americas, New York, New York 10036.

IV.

THE RELEVANT MARKETS AND BELL ATLANTIC'S MARKET POWER

18. The relevant product market for purposes of analyzing the effects of the conduct under section 2 of the Sherman Act in this case is the provision of non-wireless local telephone services ("Local Phone Service"). This market consists of

the provision of local, non-wireless telephone services to customers and the physical facilities that make such services possible.

19. The relevant geographic market for purposes of analyzing the effects of the conduct under section 2 of the Sherman Act in this case is those areas in which Bell Atlantic is the "incumbent local exchange carrier" ("ILEC") within the meaning of the 1996 Act, viz. all of New England, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and the District of Columbia (the "Geographic Market").

20. Within the Geographic Market, Bell Atlantic has a monopoly with respect to "local loops" and "local switches." While there are some smaller companies within the Geographic Market that provide local loops and local switches, these tend to be small local telephone companies serving areas, often rural, that were not deemed attractive enough for AT&T, areas recently referred to as "Never-Ever-Bell Land."

21. The local loop is the wireline—a twisted pair of copper wires, coaxial cable, fiber optic cable, or the like—that links the customer's premises to a central switching station. Telephone calls are then directed from the central switching station to their destinations.

22. Currently, the barriers to entry in the provision of local loops are high. Particularly in the Geographic Market, where most premises are in long-standing structures, it would be prohibitively expensive for a potential market entrant to duplicate the existing local loops directly to its own customers.

23. The affected product market is the provision of local, non-wireless telephone service, i.e. Local Phone Service.

24. Bell Atlantic provides Local Phone Service in the Geographic Market and has done so, including through its predecessors, since the break-up of AT&T.

25. In order to provide Local Phone Service in the Geographic Market, a company must have access to the Local Loop owned and controlled by Bell Atlantic.

V.

FACTS

26. On August 14, 1997, Bell Atlantic Corporation and NYNEX Corporation merged. Before that, they were two of the "Baby Bells."

27. According to its most recent Form 10-Q, "Bell Atlantic is a telecommunications company that operates in a region stretching from Maine to Virginia. Our principal operating subsidiaries are: New York Telephone Company, Bell Atlantic-New Jersey, Inc., Bell Atlantic-Pennsylvania, Inc., New England Telephone and Telegraph Company, Bell Atlantic-Maryland, Inc., Bell Atlantic Virginia, Inc., Bell Atlantic-West Virginia, Inc., Bell Atlantic-Delaware, Inc., Bell Atlantic-Washington, D.C., Inc. and Bell Atlantic Mobile."

28. At least since the enactment of the 1996 Act, the market for the provision of Local Phone Service has been open to all.

29. In order to provide Local Phone Service in the Geographic Market, companies must have access to the Local Loop.

30. Throughout the Class Period, Bell Atlantic has not afforded other companies access to the Local Loop on a par with its own access.

31. Among other things, Bell Atlantic has fulfilled orders of other Local Phone Service providers' customers after fulfilling those for its own Local Phone Service, has failed to fill a substantial number of orders for other Local Phone Service providers' customers substantially identical in

circumstances to its own Local Phone Service customers for whom it has filled orders, and has systematically failed to inform other Local Phone Service providers of the status of their orders with Bell Atlantic concerning their (the other Local Phone Service providers') customers.

32. On March 9, 2000, Bell Atlantic agreed to pay a $3 million fine to the U.S. Treasury pursuant to a consent decree entered into between Bell Atlantic and the Federal Communications Commission arising out of Bell Atlantic's failure to provide adequate access to Local Phone Service competitors in New York to the level required when the Federal Communications Commission allowed Bell Atlantic to offer long-distance telephone service to New Yorkers and to pay $10 million in compensation to competing Local Phone Service providers in New York for injury caused to them as a result of Bell Atlantic's misconduct in handling orders from such competing Local Phone Service providers.

VI.

INTERSTATE TRADE AND COMMERCE

33. The conduct of Bell Atlantic described in this Complaint was in, and has affected, interstate trade and commerce. In 1998, Bell Atlantic's annual revenues were just shy of $3 billion.

34. The activities of Bell Atlantic, as described herein, were within the flow of, and substantially affected, interstate commerce.

VII.

CLASS ACTION ALLEGATIONS

35. Plaintiff brings this action on its own behalf and as a class action pursuant to rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of all those who were customers of a company other than Bell Atlantic with

respect to the provision of Local Phone Service at any time since February 6, 1996 and who were damaged by the conduct complained of herein (the "Class").

36. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of members of the Class can only be determined by appropriate discovery, the Class members number in thousands.

37. Plaintiff's claims are typical of the claims of the other members of the Class. Plaintiff and all other members of the Class sustained damage to their business and property interests as a result of the wrongful conduct complained of herein.

38. Plaintiff will fairly and adequately protect the interests of the other members of the Class, and have retained counsel competent and experienced in class action, and antitrust litigation.

39. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for Class members individually to seek redress for the wrongful conduct alleged herein.

40. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether Bell Atlantic failed to provide non-discriminatory access to the local loops and other infrastructure necessary for the provision of Local Phone Service in the Geographic Market to or for the benefit of customers of Bell Atlantic's competitors in the provision of Local Phone Service;

(b) whether Bell Atlantic had a monopoly in the local loops in the Geographic Market;

(c) whether Bell Atlantic used its monopoly power in local loops in the Geographic Market to provide itself with an inappropriate competitive advantage in the Local Phone Service market in the Geographic Market;

(d) whether Bell Atlantic has violated the 1996 Act, the FCA, or the Sherman Act as a result of the conduct complained of herein;

(e) whether Plaintiffs and the other members of the Class have sustained damages to their business and property interests as a result of the wrongful conduct of Bell Atlantic alleged herein and, if so, the appropriate measure thereof;

(f) whether Bell Atlantic has improperly interfered with the contracts for the provision of Local Phone Service entered into between Plaintiff and the other members of the Class and their respective non-Bell Atlantic Local Phone Service provider; and

(g) whether Bell Atlantic should be enjoined from continuing to violate the Sherman Act, the FCA, and the Telecommunications Act of 1996.

41. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

42. The names and addresses of the members of the Class can be obtained from the Bell Atlantic competitors that provided Local Phone Service to them. Notice can be provided to such Class members using techniques and a form of notice similar to those customarily used in class actions.

AS AND FOR A FIRST
CLAIM FOR RELIEF
For Damages
Section 251 of Telecommunications Act of 1996

43. Plaintiff repeats and realleges the allegations of paragraphs 1 through 42 as if fully set forth in this paragraph.

44. Bell Atlantic is a "local exchange carrier" ("LEC") within the meaning of the 1996 Act.

45. Under section 251(b) of the 1996 Act, Bell Atlantic, as a LEC, had several obligations:

> (1) Resale. The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.
>
> . . . .
>
> (3) Dialing parity. The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.
>
> (4) Access to rights-of-way. The duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224 [47 U.S.C. § 224].
>
> (5) Reciprocal compensation. The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

47 U.S.C. § 251(b).

46. Bell Atlantic is an "incumbent local exchange carrier" ("ILEC") for the relevant Geographic Market herein within

the meaning of the 1996 Act because on February 8, 1996, the date of enactment of the 1996 Act, it provided telephone exchange service in that market and was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Federal Communications Commission's regulations (47 C.F.R § 69.601(b)).

47. As an ILEC, Bell Atlantic also had, under the 1996 Act, the following obligations:

> (1) Duty to negotiate. The duty to negotiate in good faith in accordance with section 252 [47 U.S.C. § 252] the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.
>
> (2) Interconnection. The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—
>
> (A) for the transmission and routing of telephone exchange service and exchange access;
>
> (B) at any technically feasible point within the carrier's network;
>
> (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
>
> (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 [47 U.S.C. § 252].

(3) Unbundled access. The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 [47 U.S.C. § 252]. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

(4) Resale. The duty—

(A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and

(B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

. . . .

(6) Collocation. The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual

collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

47 U.S.C. § 251(c).

48. By reason of the conduct complained of herein, Bell Atlantic has violated section 251(b) of the 1996 Act by:

(a) imposing "unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services";

(b) failing to provide "nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays";

(c) not "afford[ing] access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224" of the FCA;

(d) failing "reciprocal compensation arrangements for the transport and termination of telecommunications."

49. By reason of the conduct complained of herein, Bell Atlantic has violated section 251(c) of the 1996 Act by:

(a) failing "to negotiate in good faith . . . the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of" section 251(b) of the 1996 Act;

(b) failing "to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—

"(A) for the transmission and routing of telephone exchange service and exchange access;

"(B) at any technically feasible point within the carrier's network;

"(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

"(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252."

(c) failing "to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252" and failing to "provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service."

(d) failing "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers" and imposing "unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service"; and

(e) failing "to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier."

50. With respect to Bell Atlantic's obligations under section 251 of the 1996 Act, the provider of Local Phone Service to Plaintiff and the other members of the Class are "requesting telecommunications carriers."

51. As a "common carrier," under section 207 of the FCA, Bell Atlantic is liable to Plaintiff and the other members of the Class who have been damaged by Bell Atlantic's violation of section 251 of the 1996 Act in an amount to be determined at trial.

52. Plaintiff and the other members of the Class have not asserted the claims set forth in this Complaint that arise under section 251 of the 1996 Act before the Federal Communications Commission.

AS AND FOR A SECOND
CLAIM FOR RELIEF
For Damages
Section 202 of Federal Communications Act of 1934

53. Plaintiff repeats and realleges the allegations of paragraphs 1 through 52 as if fully set forth in this paragraph.

54. Section 202(a) of the FCA provides that:

> It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

47 U.S.C. § 202(a).

55. Bell Atlantic is a "common carrier" within the meaning of section 202(a) of the FCA.

56. Bell Atlantic's conduct complained of herein, has violated section 202(a) of the FCA in that Bell Atlantic has engaged in and continues to engage in "unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage."

57. The class of persons discriminated against are competitors of Bell Atlantic in the provision of Local Phone Service and the customers of such Bell Atlantic competitors, including Plaintiff and the other members of the Class.

58. As a "common carrier," under section 207 of the FCA, Bell Atlantic is liable to Plaintiff and the other members of the Class who have been damaged by Bell Atlantic's violation of section 202 of the FCA in an amount to be determined at trial.

59. As a consequence of Bell Atlantic's practice of discrimination, described above, plaintiff and the other members of the class have suffered actual damages in an amount to be proved at a trial.

60. Plaintiff and the other members of the Class have not asserted the claims set forth in this Complaint that arise under section 202 of the FCA before the Federal Communications Commission.

AS AND FOR A THIRD
CLAIM FOR RELIEF
For Damages and Injunctive Relief
Section 2 of the Sherman Act Against All Bell Atlantic

61. Plaintiff repeats and realleges the allegations of paragraphs 1 through 60 as if fully set forth in this paragraph.

62. Bell Atlantic has monopoly power in the provision of the local loop necessary for Local Phone Service in the Geographic Market.

63. Bell Atlantic has used its monopoly power in the local loop market to gain a competitive advantage in the market for the provision of Local Phone Service in the Geographic Market.

64. Bell Atlantic has engaged in exclusionary and anti-competitive behavior by, *inter alia*, attempting to exclude rivals in the Local Phone Service on a basis other than efficiency, i.e. by making it difficult if not impossible for its competitors to provide service in the Local Phone Service on the level that Bell Atlantic is able to provide service to its customers in that market. This conduct has had an impact on consumers and has impaired competition in the Local Phone Service in an unnecessarily restrictive way.

65. There is no valid business reason for Bell Atlantic's behavior with respect to providing access to the local loop market. This conduct has directly and adversely impacted upon the ability of consumers, including Plaintiff and the other members of the Class, to obtain satisfactory Local Phone Service. It has also caused substantial injury to competitors with Bell Atlantic in the provision of service in the Local Phone Service.

66. Bell Atlantic's behavior served no legitimate business purpose.

67. Bell Atlantic's behavior poses and has poses a substantial threat to competition in the Geographic Market's Local Phone Service market.

68. As a result of the foregoing, Bell Atlantic have violated section 2 of the Sherman Act.

69. As a result of the foregoing, Plaintiff and the other members of the Class have been injured in their business and property interests by Bell Atlantic' violation of section 2 of the Sherman Act in an amount to be determined at trial.

70. Bell Atlantic' unlawful conduct is continuing and unless equitable relief is granted competition in the Local Phone Service in the Geographic Market will be substantially and improperly adversely impacted.

71. Plaintiff and the other members of the Class have no adequate remedy at law.

AS AND FOR A FOURTH
CLAIM FOR RELIEF
For Damages
Tortious Interference with Contract

72. Plaintiff repeats and realleges the allegations of paragraphs 1 through 71 as if fully set forth in this paragraph.

73. Plaintiff and the other members of the Class had valid contracts with companies other than Bell Atlantic for the provision of Local Phone Service within the Geographic Market.

74. Bell Atlantic had knowledge of each of those contracts.

75. Insofar as the companies other than Bell Atlantic that Plaintiff and the other members of the Class had contracts for the provision of Local Phone Service within the Geographic Market were unable to provide satisfactory service to those customers and therefor breached their contracts with those

customers as a result of Bell Atlantic's conduct complained of in this Complaint, Bell Atlantic intentionally procured the breaches of those contracts.

76. Plaintiff and the other members of the Class have been damaged as a result of the breaches by their respective non-Bell Atlantic Local Phone Service providers.

77. By reason of the foregoing, Bell Atlantic is liable to Plaintiff and the other members of the Class for having intentionally interfered with their contracts with their respective non-Bell Atlantic Local Phone Service providers in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of itself and the other members of the Class, prays for judgment as follows:

(i) Declaring this action to be a proper class action pursuant to rule 23(b) of the Federal Rules of Civil Procedure on behalf of the Class defined in paragraph 36 hereof, declaring Plaintiff to be an adequate representative of that Class, and declaring Plaintiff's counsel to be counsel to the Class;

(ii) Adjudging and decreeing that Bell Atlantic has violated the Federal Communications Act of 1934, the Telecommunications Act of 1996, the Sherman Antitrust Act of 1890, and the common law;

(iii) Awarding judgment against Bell Atlantic in an amount to be determined at trial for its violations of the Federal Communications Act of 1934, the Telecommunications Act of 1996, and the common law for damages suffered by Plaintiff and the other members of the Class as a result of these violations;

(iv) Awarding judgment against Bell Atlantic in an amount to be determined at trial for its violations of

Sherman Antitrust Act of 1890 for three times the damage to the business and property interests suffered by Plaintiff and the other members of the Class as a result of Bell Atlantic's violations, plus attorneys' fees, costs, and interest as allowable by law;

(v) Enjoining Bell Atlantic from continuing to provide access to the local loop market in the Geographic Market to providers of Local Phone Service other than itself on terms and conditions that are not as favorable as those enjoyed by Bell Atlantic;

(vi) Permanently enjoining Bell Atlantic from providing access to the local loop market in the Geographic Market to providers of Local Phone Service other than itself on terms and conditions that are not as favorable as those enjoyed by Bell Atlantic;

(vii) Awarding attorneys' fees and costs in this action; and

(viii) Granting such other relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demand a trial by jury on all issues triable by jury.

Dated: New York, New York
March 10, 2000

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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00 Civ. 1910 (SHS) (JCL)

LAW OFFICES OF CURTIS V. TRINKO, LLP, individually and on behalf of all others similarly situated,

Plaintiff,

against

BELL ATLANTIC CORPORATION,

Defendant.

AMENDED COMPLAINT
JURY TRIAL DEMANDED

Plaintiff, for its Amended Class Action Complaint, alleges on information and belief as follows:

OVERVIEW OF THE ACTION

1. This is a class action that arises from a policy by Defendant, Bell Atlantic, to use its control of the physical wires over which phone services are delivered to businesses and homes in the region in which it has historically provided local, non-wireless telephone service—i.e., most of New England and the Mid-Atlantic States—to enhance or protect its dominant position in the provision of local phone service to consumers in that region. The means to this end include (i) discriminating against those users of its physical wires who are customers of local phone service companies other than Bell Atlantic, in violation of the Federal Communications Act of 1934; (ii) using its control over those physical wires to maintain or increase its control of the local phone service market in the region, in violation of the Sherman Antitrust Act of 1890; and (iii) interfering with the contracts that

customers of its local phone service competitors have with those competitors, in violation of state law. The Class consists of those local phone service customers in the region who were damaged by Bell Atlantic as a result of such improper conduct.

2. Access to Bell Atlantic's wires is important for the provision of local phone service. Local phone service, in essence, is a dial tone and the ability to make local telephone calls and to gain access to a long distance carrier for other calls. Access to Bell Atlantic's wires is important to obtain and maintain local phone service, particularly for moving locations and adding lines and other services. By making it difficult for AT&T and others, and their local telephone service customers, to obtain full use of those local lines on the same basis as it enjoyed, Bell Atlantic has deterred and will continue to deter potential customers from switching to another company for local phone service or cause customers that had switched to switch back to Bell Atlantic in frustration for the poor services rendered by their new local phone service provider, ironically as a direct result of Bell Atlantic's own conduct. As a result of such conduct, Bell Atlantic intends to enhance or maintain its dominant position in the market for the provision of local phone service in the region or, insofar as it does not have a monopoly position, to acquire one.

3. This action asserts claims against Bell Atlantic for violations of section 202 of the Federal Communications Act of 1934 (the "FCA"), 47 U.S.C § 202; and section 2 of the Sherman Antitrust Act of 1890, 15 U.S.C. § 2. It also asserts state law claims for tortious interference with the contractual relationships established by Class members with providers of local telephone service by a company other than Bell Atlantic.

Background

4. Until 1982, American Telephone & Telegraph Co. ("AT&T") dominated the national telecommunications

industry, controlling virtually all long-distance telephone service, most local telephone service, and a substantial amount of telephone equipment manufacturing. In 1982, however, AT&T entered into an antitrust consent decree in an action brought against it by the United States Justice Department, which ended its industry dominance.

5. The decree split AT&T from its local telephone service subsidiaries, known as "Baby Bells." By doing so, the decree sought to encourage new competition in long-distance service by firms such as MCI and Sprint. It also encouraged new competition in telephone equipment markets.

6. The decree, however, did not introduce new competition into the local telephone service markets. Rather, it left each local market in the hands of a single state-regulated local service supplier, such as (at the time) New York Telephone or NYNEX in most of New York and Bell Atlantic in Washington, D.C.

7. There ensued competition in the United States for the provision of interstate long-distance telephone service.

8. This action largely derives from the sea change contemplated by the Telecommunications Act of 1996 (the "1996 Act"), which amended the FCA. While the claims asserted herein do not arise under the 1996 Act, that statute created the market structure that has been adversely affected by Bell Atlantic's misconduct, to the injury of Plaintiff and the other members of the Class. In particular, the 1996 Act ended the legal approval of the monopoly that Bell Atlantic and the other Baby Bells had had for the provision of local telephone service in their respectively parts of the country after the 1982 break-up of AT&T.

9. Firms that provided local phone service before the 1996 Act are known as Incumbent Local Exchange Carriers, or "ILECs." Those firms that entered the local phone service market after 1996 are known as Competitor Local Exchange Carriers, or "CLECs."

10. In August 1997, NYNEX and Bell Atlantic merged to form Bell Atlantic. Upon such merger, Bell Atlantic provided local telephone service in most of New England and the Middle Atlantic States, from New York south to Virginia and West Virginia. The relevant geographic market herein is those areas in which Bell Atlantic is the ILEC, viz., most of or all of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, the District of Columbia, and those portions of Connecticut and other states in which Bell Atlantic is the ILEC (the "Geographic Market"). Not included in the Geographic Market are those portions of these states in which Bell Atlantic was not the ILEC, such as Rochester in New York.

JURISDICTION AND VENUE

11. This Complaint alleges violations of section 202(a) of the FCA, as amended, 47 U.S.C. § 202(a), and section 2 of the Sherman Antitrust Act of 1890, 15 U.S.C. § 2. It also invokes the Court's supplemental jurisdiction with respect to the Class's claims that arise under state common law.

12. The jurisdiction of this Court exists pursuant to sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26; sections 206 and 207 of the FCA, as amended, 47 U.S.C, §§ 206, 207; and sections 1331 and 1337 of the United States Judicial Code; 28 U.S.C. §§ 1331 and 1337.

13. Bell Atlantic is found or transacts business in the Southern District of New York, and venue in this Court therefore exists pursuant to section 12 of the Clayton Act, 15 U.S.C. § 22 and 28 U.S.C. § 1391(b). In addition, Bell Atlantic has sufficient contacts with the Southern District of New York so as to make it subject to personal jurisdiction in this District were the Southern District of New York a separate state, and venue in this Court therefore exists pursuant to section 1391 of the Judicial Code, 28 U.S.C. § 1391(c).

PARTIES

14. Plaintiff Law Offices of Curtis V. Trinko, LLP, is a limited liability partnership organized under New York law with its principal office in New York, New York, within the Geographic Market.

15. Defendant Bell Atlantic Corporation ("Bell Atlantic"), is a Delaware corporation with its principal offices at 1095 Avenue of the Americas, New York, New York 10036. On June 30, 2000, Bell Atlantic and GTE Corporation completed a merger as a result of which GTE Corporation became a wholly-owned subsidiary of Bell Atlantic. With the closing of the Merger, the combined company began doing business as Verizon Communications Inc.

FACTS

16. On August 14, 1997, Bell Atlantic Corporation and NYNEX Corporation merged. Before that, they were two of the "Baby Bells."

17. According to a Bell Atlantic Form 10-Q that predated its merger with GTE, "Bell Atlantic is a telecommunications company that operates in a region stretching from Maine to Virginia. Our principal operating subsidiaries are: New York Telephone Company, Bell Atlantic-New Jersey, Inc., Bell Atlantic-Pennsylvania, Inc., New England Telephone and Telegraph Company, Bell Atlantic-Maryland, Inc., Bell Atlantic-Virginia, Inc., Bell Atlantic-West Virginia, Inc., Bell Atlantic-Delaware, Inc., Bell Atlantic-Washington, D.C. Inc. and Bell Atlantic Mobile."

18. Although Verizon Communications provides local telephone services in over thirty states, this action concerns the provision of such service in the area serviced by Bell Atlantic before its merger with GTE Corporation, including in the period after the merger.

19. In order to provide a competitive level of local phone service in the Geographic Market without having to make the significant financial and time-consuming commitment that the creation of a separate local loop requires, CLECs must have access to Bell Atlantic's local loop. A local loop is the wireline—a twisted pair of copper wires, coaxial cable, fiber optic cable, or the like—that links the customer's premises to a central switching station. Telephone calls are then directed from the central switching station to their destinations. CLECs gain access to Bell Atlantic's local loop through the entry of resale agreements with Bell Atlantic pursuant to which, *inter alia*, Bell Atlantic obligates itself to provide access and service for the CLEC's customers on the same terms as are provided for Bell Atlantic's own local phone service customers.

20. The alternative means of entering the local phone service market are for a CLEC to build its own local loop, in which case it still must interconnect with Bell Atlantic's phone network or for a CLEC to build some, but not all, of its own facilities. That such a commitment is required is a barrier to entry into the market for providing local phone service in the Geographic Market. Resale agreements are an easier, cheaper means of entering the local phone service market in the Geographic Market.

21. Throughout the Class Period, Bell Atlantic has not afforded CLECs access to the local loop on a par with its own access. Among other things, Bell Atlantic has filled orders of CLEC customers after filling those for its own local phone service, has failed to fill in a timely manner, or not at all, a substantial number of orders for CLEC customers substantially identical in circumstances to its own local phone service customers for whom it has filled orders on a timely basis, and has systematically failed to inform CLECs of the status of their customers' orders with Bell Atlantic.

22. On March 9, 2000, after Plaintiff retained counsel to investigate and pursue its claim, Bell Atlantic agreed to pay a $3 million fine to the U.S. Treasury pursuant to a consent decree entered into between Bell Atlantic and the Federal Communications Commission arising out of Bell Atlantic's failure to provide adequate access to Local Phone Service competitors in New York to the level required when the Federal Communications Commission allowed Bell Atlantic to offer long-distance telephone service to New Yorkers and to pay $10 million in compensation to competing Local Phone Service providers in New York for injury caused to them as a result of Bell Atlantic's misconduct in handling orders from such competing Local Phone Service providers.

23. Plaintiff has obtained local phone service in the Geographic Market from AT&T, which is a CLEC, i.e., a carrier other than Bell Atlantic, and has suffered injury to its business as a result of the conduct of Bell Atlantic complained of herein.

24. Plaintiff's local phone service requires access to and the provision by Bell Atlantic of services on Bell Atlantic's local loop, as does the local phone service of Plaintiff's fellow Class members. Such access and the provision of such services is arranged by its CLEC, which has entered into an agreement with Bell Atlantic pursuant to which Bell Atlantic is obligated to afford the CLEC access to and services on the local loop on the same terms as are afforded to its (Bell Atlantic's) own local phone service customers. In each such case, the CLEC acts as the agent for its customers (including Plaintiff and the other members of the Class) in arranging with Bell Atlantic for such access or the provision of such services.

25. Plaintiff and the other members of the Class use Bell Atlantic's local loop when they obtain local phone service from their CLECs.

INTERSTATE TRADE AND COMMERCE

26. The conduct of Bell Atlantic described in this Complaint was in, and has affected, interstate trade and commerce. In 1998, Bell Atlantic's annual revenues were just under $3 billion.

27. The activities of Bell Atlantic, as described herein, were within the flow of, and substantially affected, interstate commerce.

CLASS ACTION ALLEGATIONS

28. Plaintiff brings this action on its own behalf and as a class action pursuant to rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of all those who were customers of a company other than Bell Atlantic with respect to the provision of Local Phone Service in the Geographic Market at any time since March 10, 1996 and who were damaged by the conduct complained of herein (the "Class"). As used herein, "Local Phone Service" means the provision of non-wireless local telephone services.

29. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of members of the Class can only be determined by appropriate discovery, the Class members number in the thousands.

30. Plaintiff's claims are typical of the claims of the other members of the Class. Plaintiff and all other members of the Class sustained damage to their business and property interests as a result of the wrongful conduct complained of herein.

31. Plaintiff will fairly and adequately protect the interests of the other members of the Class, and have retained counsel competent and experienced in class action and antitrust litigation.

32. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for Class members individually to seek redress for the wrongful conduct alleged herein.

33. Common questions of law and fact exist as to all members of the Class, and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether Bell Atlantic has engaged in unjust or unreasonable discrimination in the provision of access to and services related to its local loop against Plaintiff and the other members of the Class;

(b) whether Bell Atlantic engaged in anticompetitive conduct that has a dangerous probability of allowing it to acquire or maintain a monopoly in the Local Phone Service market in the Geographic Market; and

(c) whether Bell Atlantic has improperly interfered with the contracts for the provision of Local Phone Service entered into between Plaintiff and the other members of the Class and their respective non-Bell Atlantic Local Phone Service provider (CLEC).

34. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

35. The names and addresses of the members of the Class can be obtained from the Bell Atlantic competitors that provided Local Phone Service to them. Notice can be provided to such Class members using techniques and a form of notice similar to those customarily used in class actions.

AS AND FOR A FIRST CLAIM FOR RELIEF
For Damages
Section 202 of Federal Communications Act of 1934

36. Plaintiff repeats and realleges the allegations of paragraphs 1 through 35 as if fully set forth in this paragraph.

37. Section 202(a) of the FCA provides that:

> It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

47 U.S.C. § 202(a).

38. Bell Atlantic is a "common carrier" within the meaning of section 202(a) of the FCA.

39. Plaintiff and each other member of the Class has a direct relationship with Bell Atlantic regarding Bell Atlantic's local loop because each uses that local loop whenever they use the local phone service provided by their CLEC.

40. In addition, the structure of the Local Phone Service market is such that in connection with the ordering of services from Bell Atlantic by a CLEC for its, the CLEC's, customers, the CLEC is acting as agent of the customers in such a manner that the CLEC and its customers are not distinct economic entities in dealing with the services being rendered by Bell Atlantic and, accordingly, the CLEC's customers, including Plaintiff and the other members of the Class, have a sufficiently direct relationship with Bell Atlantic to permit

their assertion of a claim pursuant to section 202(a) of the FCA.

41. Bell Atlantic's conduct complained of herein has violated section 202(a) of the FCA in that Bell Atlantic has engaged in and continues to engage in unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by a means or device, has made or given undue or unreasonable preference or advantage to another class of persons, and has subjected a class of persons to undue or unreasonable prejudice or disadvantage.

42. The class of persons discriminated against are the customers of Bell Atlantic's competitors, including Plaintiff and the other members of the Class. Plaintiff and the other members of the Class have a sufficiently direct relationship with Bell Atlantic as a result of the agency relationship that exists between them and their respective CLECs to permit them to assert this claim.

43. Because it is a "common carrier," under section 207 of the FCA Bell Atlantic is liable to Plaintiff and the other members of the Class who have been damaged by Bell Atlantic's violation of section 202 of the FCA in an amount to be determined at trial.

44. Plaintiff and the other members of the Class have not asserted the claims set forth in this Complaint that arise under section 202 of the FCA before the Federal Communications Commission.

AS AND FOR A SECOND
CLAIM FOR RELIEF
For Damages and Injunctive Relief
for Attempted Monopolization
Section 2 of the Sherman Act

45. Plaintiff repeats and realleges the allegations of paragraphs 1 through 35 as if fully set forth in this paragraph.

46. The relevant product market for purposes of analyzing the effects of the conduct in this case under section 2 of the Sherman Act is the Local Phone Service market defined herein.

47. The geographic market for purposes of analyzing the effects of the conduct in this case under section 2 of the Sherman Act is the Geographic Market defined herein.

48. Within the Geographic Market, Bell Atlantic has a monopoly with respect to local loops that existed in 1996. While there are some smaller companies within the Geographic Market that provided local loops and local switches before 1996, they tended to be small local telephone companies serving areas, often rural, that were not deemed attractive enough for pre-breakup AT&T.

49. Bell Atlantic provides Local Phone Service in the Geographic Market and has done so, including through its predecessors, since the break-up of AT&T.

50. According to an October 1999 article in FORBES MAGAZINE, Bell Atlantic had a 96% share of the Local Phone Service market in the Geographic Market at the time. The New York State Public Service Commission disclosed that Bell Atlantic had 82% of the local exchanges in New York as of December 31, 1999, and testimony before a committee of the New Jersey State Senate asserted that Bell Atlantic had 98% of the local exchanges in that state. In December 2000, Verizon stated that it had 89% of the local phone service market in Massachusetts.

51. The barriers to entry in the provision of Local Phone Service are high. Particularly in the Geographic Market, where most premises are in long-standing structures, it is expensive and requires large capital outlays for a potential market entrant to duplicate the existing local loops directly to its own customers. The alternative is to create new facilities, which is both expensive and time-consuming.

52. Bell Atlantic has engaged in exclusionary and anticompetitive behavior by, *inter alia*, attempting to exclude or reduce the market share of rivals in the Local Phone Service on a basis other than efficiency, i.e., by making it difficult for its competitors to provide service in the Local Phone Service market on the level that Bell Atlantic is able to provide to its customers in that market. This conduct has had an impact on consumers and has impaired competition in the Local Phone Service in an unnecessarily restrictive way.

53. In particular, Bell Atlantic's conduct complained of herein has increased the barriers to entry into the Local Phone Service market in the Geographic Market, has retarded the development of competition within the Local Phone Service market in the Geographic Market, and has weakened the ability of competitors to compete in the Local Phone Service market within the Geographic Market.

54. Bell Atlantic had agreements with Plaintiff's CLEC as well as with the CLECs of the other members of the Class to provide access to and services for Bell Atlantic's local loop on nondiscriminatory terms. The access and level of services that Bell Atlantic in fact provided to Plaintiff's CLEC and to the CLECs of the other members of the Class was not substantially the same as Bell Atlantic provided for itself for its own Local Phone Service customers. The plain effect of this conduct is that Plaintiff's CLEC and the CLECs of the other members of the Class were prevented from offering Local Phone Service of the quality as was offered by Bell

Atlantic to its own Local Phone Service customers and thereby to impede the ability of those CLECs to enter and to compete with Bell Atlantic in the Local Phone Service in the Geographic Market. This conduct is continuing.

55. By entering into resale agreements with CLECs, Bell Atlantic induced CLECs to attempt to enter into the Local Phone Service market in the Geographic Market through resale agreements as opposed to erecting their own facilities, inducing them to attempt to compete with Bell Atlantic in the Local Phone Service market in the Geographic Market through the use of such agreements and into enrolling customers, including Plaintiff and the other members of the Class, as Local Phone Service customers. Bell Atlantic failed to fulfill its obligations under those agreements.

56. The anticompetitive conduct of Bell Atlantic complained of herein had and has a dangerous probability of preventing CLECs from establishing significant positions in the Local Phone Service in the Geographic Market, which establishment would dilute Bell Atlantic's market power in the Local Phone Service in the Geographic Market, and therefore of allowing Bell Atlantic to acquire a monopoly in that market.

57. There is no valid business reason for Bell Atlantic's behavior with respect to providing access to its local loop. This conduct has directly and adversely impacted upon the ability of consumers, including Plaintiff and the other members of the Class, to obtain satisfactory Local Phone Service. It has also caused substantial injury to competitors with Bell Atlantic in the provision of service in the Geographic Market.

58. The aforementioned conduct was anticompetitive conduct and made with a specific intent to attempt to acquire a, or maintain its, monopoly in the Local Phone Service market within the Geographic Market or to maintain the monopoly that it holds in that market.

59. As a result of the foregoing, Bell Atlantic have violated section 2 of the Sherman Act and Plaintiff and the other members of the Class have been injured in their business and property interests by that violation in an amount to be determined at trial.

60. Bell Atlantic's unlawful conduct is continuing and unless equitable relief is granted competition in the Local Phone Service in the Geographic Market will be substantially and improperly adversely impacted.

61. Plaintiff and the other members of the Class have no adequate remedy at law.

AS AND FOR A THIRD
CLAIM FOR RELIEF
For Damages
Tortious Interference with Contract

62. Plaintiff repeats and realleges the allegations of paragraphs 1 through 35 as if fully set forth in this paragraph.

63. Plaintiff and the other members of the Class had valid contracts with companies other than Bell Atlantic for the provision of Local Phone Service within the Geographic Market.

64. Bell Atlantic had knowledge of each of those contracts.

65. Insofar as the CLECs with which Plaintiff and the other members of the Class had contracts for the provision of Local Phone Service within the Geographic Market were unable to provide satisfactory service to those customers and therefor breached their contracts with those customers as a result of Bell Atlantic's conduct complained of in this Complaint, Bell Atlantic intentionally procured the breaches of those contracts.

66. Plaintiff and the other members of the Class have been damaged as a result of the breaches by their respective CLECs.

67. By reason of the foregoing, Bell Atlantic is liable to Plaintiff and the other members of the Class for having intentionally interfered with their contracts with their respective CLECs in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of itself and the other members of the Class, prays for judgment as follows:

(i) Entering an order certifying this action as a proper class action pursuant to rule 23(b) of the Federal Rules of Civil Procedure on behalf of the Class defined in paragraph 28 hereof, certifying Plaintiff as an adequate representative of that Class, and certifying Plaintiff's counsel as counsel to the Class;

(ii) Adjudging that Bell Atlantic has violated the Federal Communications Act of 1934, the Sherman Antitrust Act of 1890, and the common law;

(iii) Awarding judgment against Bell Atlantic in an amount to be determined at trial for its violations of the Federal Communications Act of 1934 and the common law for damages suffered by Plaintiff and the other members of the Class as a result of these violations;

(iv) Awarding judgment against Bell Atlantic in an amount to be determined at trial for its violations of Sherman Antitrust Act of 1890 for the damage to the business and property interests suffered by Plaintiff and the other members of the Class as a result of Bell Atlantic's violations, to be trebled according to law, plus attorney's fees, costs, and interest as allowable by law;

(v) Preliminarily and permanently enjoining Bell Atlantic from providing access to the local loop market in the Geographic Market to providers of Local Phone

Service other than itself on terms and conditions that are not as favorable as those enjoyed by Bell Atlantic;

(vi) Awarding attorney's fees and costs in this action; and

(vii) Granting such other relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues triable by jury.

Dated: New York, New York
January 19, 2001

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